

§ 852.17

The Program Office reviews the three opinions and considers the majority of the three opinions as the determination by the Physician Panel for purposes of § 852.17(a) of this part.

(c) The Program Office may direct the original Physician Panel or a different Physician Panel to reexamine an application that has undergone prior Physician Panel review if:

(1) There is significant evidence contrary to the panel determination;

(2) The Program Office obtains new information the consideration of which would be reasonably likely to result in a different determination;

(3) The Program Office becomes aware of a real or potential conflict of interest of a member of the original panel in relation to the application under review; or

(4) Reexamination is necessary to ensure consistency among panels.

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§ 852.17 Must the Program Office accept the determination of a Physician Panel?

(a) Subject to the ability of the Program Office to direct a reexamination pursuant to § 852.16, the Program Office must accept the determination by the Physician Panel unless the Program Office determines there is significant evidence contrary to the panel determination.

(b) The Program Office must promptly notify an applicant and the relevant DOE contractor(s) of its acceptance or rejection of a determination by a Physician Panel.

§ 852.18 Is there an appeals process?

(a) An applicant may request DOE's Office of Hearings and Appeals (OHA) to review:

(1) A decision by the Program Office not to submit an application to a Physician Panel;

(2) A negative determination by a Physician Panel that is accepted by the Program Office; and

(3) A final decision by the Program Office not to accept a determination in the applicant's favor by a Physician Panel.

(b) An applicant must file a notice of appeal with OHA on or before 30 days from the date of a letter from the Pro-

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gram Office notifying the applicant of a determination appealable under this section.

(c) An appeal under this section is subject to the procedures of OHA in 10 CFR Part 1003.

(d) A decision by OHA constitutes DOE's final determination with respect to an application.

§ 852.19 What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?

In the event the Program Office accepts a determination by a Physician Panel in favor of an applicant:

(a) The Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system by providing the determination and other information provided to the Program Office by a Physician Panel pursuant to § 852.12 of this part;

(b) The Program Office may not contest the determination;

(c) The Program Office must advise the cognizant DOE Secretarial Officer to recommend to the Contracting Officer (CO) for a DOE contractor that, to the extent permitted by law, the CO direct the contractor not to contest an applicant's workers' compensation claim or award in any administrative or judicial forum with respect to the same health condition for which the applicant received a favorable final Physician Panel determination;

(d) Any costs of contesting a claim or award identified in paragraph (c) of this section—that is, any costs of supporting arguments or activities with the intent or effect of delaying or defeating such a claim or award—are not allowable costs under a DOE contract; and,

(e) All workers' compensation costs incurred as a result of a workers' compensation award on a claim based on the same health condition that was the subject of a positive Physician Panel determination are allowable, reimbursable contract costs to the full extent permitted under the DOE contractor's contract with DOE.